

1 In re: **JEROME V. GREEN,**

2 Case No.: 2:10-bk-16202

3 FOR THE DISTRICT OF ARIZONA

4 IN THE UNITED STATES BANKRUPTCY COURT

5 State Bar No. 027327

6 Member(guymonlaw.com

7 866-593-6928 Fax

8 480-721-8772 Phone

9 Gilbert, Arizona 85297

10 Suite 114-246

11 3317 South Higley Road

12 Law Office of Amberg L. Guymon, Esq.

13 Amberg L. Guymon

14 **COMPLAINT TO DETERMINE THE
15 VALIDITY, PRIORITY OR EXTENT OF
16 PROPERTY
17 A LIEN OR OTHER INTEREST IN
18 THE BANK OF NEW YORK MELLON
19 FORMERLY KNOWN AS THE BANK OF
20 NEW YORK AS SUCCESSOR TRUSTEE
21 TO JPMORGAN CHASE BANK, its
22 successors and/or assigns,
23 and
24 assignees,
25 Defendants.**

26 Plaintiff,

27 **JEROME V. GREEN,**

28 Debtors.

V. Adv. No.: 2:10-ap-

hereby states for his Complaint as follows:

COMES NOW, the Plaintiff, Jerome Green, by and through undersigned Counsel, and

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; 11 U.S.C. § 506(a) and (d), and Rule 7001 et. Seq. Rules of Bankruptcy Procedure. 2. This matter, a complaint to determine the extent, validity, and prior of liens, is a core matter under 28 U.S.C. §§ 157(b)(2)(B) and 157(b)(2)(K). 3. Venue is proper pursuant to 28 U.S.C. § 1409. 4. Plaintiff ("Green") resides in Maricopa County, Arizona and is the Debtor in the above-captioned Chapter 13 proceeding. 5. Defendant One, Bank of New York Mellon ("Bank of NY"), formerly JP Morgan Chase Bank, upon information and belief, is licensed to do, write and make residential mortgage loans in the State of Arizona. 6. Defendant Two, EMC Mortgage ("EMC"), upon information and belief, is licensed to do, write and make residential mortgage loans in the state of Arizona. 7. Green filed a Chapter 13 Voluntary Petition on May 25, 2010 in the District of Arizona, Case No. 2:10-BK-16202-GGC. 8. Green, at the time of the filing of his case, was the owner of investment real property located at 412 E. Pecan Road, Phoenix, Arizona 85050 (the "Property"). 9. Green believes that the Property is worth \$32,000 based on an appraisal dated April 30, 2010. A copy of the appraisal is attached as Exhibit "A". 10. The Property is subject to first and second mortgage liens. On or about December 1, 2005, the Plaintiff entered into a contract in favor of the original Lender (later assigned to EMC Mortgage) for \$97,600. Green's contract was divided into first and second mortgages (80/20 or 20/20) for \$78,000 and \$19,600) for logistics purposes. However, the entire amount of the loan, though originally divided, was meant for securing the Property. Debtor received no monies from the transaction and the full amount was dispersed to the seller. 11. Copies of the Proofs of Claim are attached as Exhibit "B". Upon information and belief, Bank of NY and EMC Mortgage are now the holders of the Notes that are secured by the Deed of Trust and are the real parties in interest. 12. The Bank of NY filed a proof of claim in the amount of \$78,000 on September 2, 2010. 13. The Bank of NY filed a proof of claim in the amount of \$19,600 on June 28, 2010. 14. The Bank of NY filed a proof of claim in the amount of \$19,600 on June 28, 2010. 15. The Bank of NY filed a proof of claim in the amount of \$19,600 on June 28, 2010. 16. The Bank of NY filed a proof of claim in the amount of \$19,600 on June 28, 2010. 17. The Bank of NY filed a proof of claim in the amount of \$19,600 on June 28, 2010. 18. The Bank of NY filed a proof of claim in the amount of \$19,600 on June 28, 2010. 19. The Bank of NY filed a proof of claim in the amount of \$19,600 on June 28, 2010. 20. The Bank of NY filed a proof of claim in the amount of \$19,600 on June 28, 2010. 21. The Bank of NY filed a proof of claim in the amount of \$19,600 on June 28, 2010. 22. The Bank of NY filed a proof of claim in the amount of \$19,600 on June 28, 2010. 23. The Bank of NY filed a proof of claim in the amount of \$19,600 on June 28, 2010. 24. The Bank of NY filed a proof of claim in the amount of \$19,600 on June 28, 2010. 25. The Bank of NY filed a proof of claim in the amount of \$19,600 on June 28, 2010. 26. The Bank of NY and EMC Mortgage are now the holders of the Notes that are secured by the Deed of Trust and are the real parties in interest. 27. The Bank of NY filed a proof of claim in the amount of \$19,600 on June 28, 2010. 28. The Bank of NY filed a proof of claim in the amount of \$19,600 on June 28, 2010.

WHEREFORE, Green prays that this Court finds in favor of the Plaintiff and Order the following:

a. Finding that the First and Second Notes alleged herein be crammed down to the property's secured value and paid out according to Green's Chapter 13 Plan;

b. The Defendants shall be entitled to the appraised value of the property at \$32,000;

c. The Defendants are provided adequate protection under Debtor's Chapter 13 Plan;

d. The Defendants shall release any and all claims related to the property beyond in the Property with respect to the deed of trust recorded upon entry of any discharge order and deliver the same to Green within twenty (20) days from the date of the entry of the discharge order at no charge or fee;

e. The Defendants shall record a deed of release and re-conveyance of their interest in the Property with respect to the deed of trust recorded upon entry of any discharge order and deliver the same to Green within twenty (20) days from the date of the entry of the discharge order at no charge or fee;

f. That each party bear their own costs in relation to this action; and

g. Award any additional relief that the Court deems justified and appropriate.

RESPECTFULLY SUBMITTED, this 8th day of November, 2010.

Attnomey for the Plaintiff/Debtor
Amber L. Guymon, Esq.
/s/ Amber L. Guymon

1. Following:
2. a. Finding that the First and Second Notes alleged herein be crammed down to the property's secured value and paid out according to Green's Chapter 13 Plan;
3. b. The Defendants shall be entitled to the appraised value of the property at \$32,000;
4. c. The Defendants are provided adequate protection under Debtor's Chapter 13 Plan;
5. d. The Defendants shall release any and all claims related to the property beyond in the Property with respect to the deed of trust recorded upon entry of any discharge order and deliver the same to Green within twenty (20) days from the date of the entry of the discharge order at no charge or fee;
6. e. The Defendants shall record a deed of release and re-conveyance of their interest in the Property with respect to the deed of trust recorded upon entry of any discharge order and deliver the same to Green within twenty (20) days from the date of the entry of the discharge order at no charge or fee;
7. f. That each party bear their own costs in relation to this action; and
8. g. Award any additional relief that the Court deems justified and appropriate.

RESPECTFULLY SUBMITTED, this 8th day of November, 2010.

Attnomey for the Plaintiff/Debtor
Amber L. Guymon, Esq.
/s/ Amber L. Guymon

Copy of the following sent by US mail
this 8th day of November, 2010 to:

SERVICE LIST

1	Rachel A. Dapena	PITE DUNCAN LLP 4375 Julian Drive	San Diego, CA 92177-0933 Suite 200 Bank of New York Mellon Automedy for Defendant,	Mark S. Bosco	TIFFANY & BOSCO 2525 E. Camelback Road Third Floor Phoenix, Arizona 85016 EMC Mortgage Automedy for Defendant,	Russell Brown 3838 North Central Avenue Suite 800 Phoenix, Arizona 85012-1965 Trustee	Jerome V. Green 4716 W. Maldonado Road Laveen, Arizona 85339 Defendant	18
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In re: **In Proceeding Under Chapter 13**

IN THE UNITED STATES BANKRUPTCY COURT

UNITED STATES BUREAU OF INVESTIGATION

IN THE UNITED STATES BANKRUPTCY COURT

Member L. Guymon
Law Office of Member L. Guymon
3317 South Higley Road
Suite 114-246
Gilbert, Arizona 85297
480-721-8772 Phone
866-593-6928 Fax
Member@ guymonlaw.com
State Bar No. 027327

12 DATED: November 8, 2010
13 LAW OFFICE OF AMBER L. GUYMON, PLLC
14

15
16 San Diego, CA 92177-0933
17 P.O. Box 17933
18 4375 Julian Drive, Suite 200
19 PITE DUNCAN, LLP
20 Kyle Shelton, Esq.
21

22 above-captioned matter to be served via certified mail, postage pre-paid on the following:
23
24 On November 8, 2010, I caused the summons and a copy of the complaint in the
25

26 3. I am not a party to the above-captioned matter.
27
28 1. I am not less than eighteen (18) years of age.

1. I, Leighann Pack, from my own personal knowledge state:

2 State of Arizona }
3 Maricopa County } ss.
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1 In re: **JEROME V. GREEN**,
2 Case No.: 2:10-bk-16202
3 In Proceeding Under Chapter 13

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Suite 114-246
Gilbert, Arizona 85297
480-721-8772 Phone
866-593-6928 Fax
Member, Arizona Bar No. 027327
Member, GuymonLaw.com
State Bar No. 027327
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LAW OFFICE OF MEMBER L. GYMON, PLLC

DATE: November 8, 2010

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Mark Bosco, Esq.
TFFANY & BOSCO
2525 E. Camelback Road
Third Floor
Phoenix, Arizona 85016

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I, Leighann Pack, from my own personal knowledge state:

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State of Arizona)
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Subscribed and sworn to before me this 8th day of November, 2010, by Leighann Pack.
Leighann Pack
633 E. Ray Road
Suite 134
Gilbert, Arizona 85296
Notary Public
Member L. Guymon
My Comm. Expires April 27, 2014
NOTARY PUBLIC - STATE OF ARIZONA
AMBEE R GYMON
OFFICIAL SEAL